

Voluntary Euthanasia, Assisted Suicide, Suicide & the Law

In most western countries, suicide is legal, yet assisted suicide is a crime, attracting harsh legal penalties. While a person who takes their own life commits no crime, a person found guilty of assisting another can face a long jail term.

Think about it. The law makes it a crime for a person to assist another person to do something that is lawful. There is no other example of this in modern western legal systems. This is why any person who chooses to be involved in the death of another - however tangentially and for whatever reasons – needs to be very careful indeed. This is especially true when friends and family are involved and emotions may cloud one's judgement.

Legal Definitions & Penalties

Technically speaking, Voluntary Euthanasia is the term used to describe the situation when a medical professional might administer to a patient a lethal injection. Voluntary euthanasia is legal in countries such as the Netherlands, Belgium and Luxembourg.

By contrast, Physician Assisted Suicide (PAS) or Medical Aid in Dying (MAID) are the terms that describe when a medical professional prescribes, but does not administer, a lethal drug

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to a patient. The US states of Oregon, Washington, Vermont, California and Colorado (in case law in Montana), Canada and the Australian state of Victoria (from 2019) all permit PAS or MAID.

If we drop the descriptors and the term is simply ‘Assisted Suicide’ we are describing the situation in Switzerland where anyone can help someone else to die, as long as their motives are ‘not selfish’ (honourable).

Speaking more broadly, assisted suicide is legally defined as ‘advising,’ ‘counselling’ or ‘assisting’ a person to end their life. Sometimes the words ‘aid and abet’ are also used. In most countries assisting a suicide carries severe legal penalties.

The penalties generally range from 5 years to life imprisonment, depending upon the jurisdiction (eg. Australia). In Britain (and Canada) the penalty is up to 14 years. Following a successful campaign by MS sufferer Debbie Purdy to seek clarification of the law in the UK, in 2009, the Director of Public Prosecutions, Keir Starmer, issued clarifying guidelines.

See: <http://bit.ly/StarmerGuidelines>

In the US, the penalties for assisted suicide vary from state to state with assisting a suicide illegal in just over half of all states. Those where it is not ‘on the books’ treat the act in the same way as they treat murder or manslaughter!

In Michigan, the late Dr Jack Kevorkian was incarcerated for almost a decade for the euthanasia of his terminally ill patient, Thomas Youk. In March 1999, Kevorkian was convicted of second degree murder and sentenced to 10 to 25 years jail.

Falling Foul of Assisted Suicide Laws

A significant grey area continues to exist regarding assisted suicide laws, with courts and lawyers unable to give clear and concise answers. As a result, well-intentioned people fall foul of the law.

In 2015 for example, the Irish authorities prosecuted 43-year old Dublin woman, Gail O'Rorke, for attempting to buy her friend, MS sufferer Bernadette Forde, a one-way ticket to Switzerland (for an assisted death at Dignitas). The public prosecutor argued that this was an act of suicide assistance. Gail would be the first person ever to be charged with assisting a suicide in Ireland.

Fortunately, the jury in Dublin's Criminal Court disagreed with the prosecutor, and Gail was found 'not guilty'. However, the State had made its point. The authorities can be keen to prosecute those who seek to help others to die, regardless of how honourable their motives may be.



Gail O'Rorke with her book
Crime or Compassion?

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Gail's trial was reported at:

<http://bit.ly/IrelandCalling>

<http://bit.ly/EvokeInterview>

<http://bit.ly/IrishNewsInterview>

Her acquittal was reported at:

See: <http://www.bbc.com/news/world-europe-32499331>

Gail O'Rourke has since written a book detailing her experience at the hands of the Irish criminal justice system, *Crime or Compassion? One woman's story of a loving friendship that knew no bounds* (Hatchett Books).

See: <http://bit.ly/CrimeorCompassion>

The Trial of Suzy Austen

A 2018 trial at the other end of the world (New Zealand) also examined the issue of assisted suicide but with a very different set of facts.

In February 2018, Exit's Wellington Coordinator, Suzy Austen, was tried in Wellington's High Court with assisting the suicide of fellow Exit member Annemarie Treadwell. Annemarie was 77 years old and suffered from increasingly painful arthritis. She had also suffered for over 20 years from depression (especially during winter). The jury ultimately found Suzy 'not guilty' of helping Annemarie to die.

Trials such as that of Gail O'Rourke and Suzy Austen are relatively rare but are important because they create case law. So when they do come along, the take-home messages deserve

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Suzy Austen speaking outside court after the verdict

careful scrutiny. To this end, the authors took two weeks leave to attend Suzy Austen's 2-week trial. A summary of the lessons learned is below.

Note: Suzy was also charged (and found guilty) with importing Nembutal into NZ using a variety of methods and on several occasions. The outcome of these guilty verdicts (in regard to sentencing) will be known in May 2018 and will be covered in a future update.

By way of background, Suzy's trial came about, not because Annemarie Treadwell had died peacefully at home, but because an autopsy revealed she had drunk a lethal dose of Nembutal.

Annemarie looked serenely peaceful in bed when she was found by her daughter, Veronica, the morning after her death. Her apartment was neat. There were no drug packets left lying around. There was no sign of forced entry and so on. She was simply an elderly woman who looked like she had died peacefully in her sleep.

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The only problem was, Annemarie had left a diary. In this record of her life, Annemarie not only detailed her plans, she mentioned certain people by name. Furthermore, she mentioned the importance of not implicating them in her suicide. However, in stating as much, implicating them (and Suzy Austen in particular) is exactly what she did.

Lesson No 1 - Don't leave a diary

It was Annemarie's daughter, Veronica, who found her mother's diary in the bedside drawer. She then innocently handed it over to the Police. This would set in train a series of events that few could have foreseen. The authorities were tipped off and Suzy was in for a rocky ride as her emails and phone calls were intercepted and her home was bugged.

Unaware that she was now 'under surveillance' by the Police thanks to Annemarie's diary, Suzy Austen carried on her volunteer work with Exit: holding meetings and talking to members on the phone and by email. All the while Police were gathering evidence that they would later use in court against her.

What Suzy did not know - and perhaps what no one could have imagined - was that the Police had, in the interim, launched an undercover investigation called 'Operation Painter'. This covert operation achieved legend status when it mounted an alcohol check point - not to test for drink driving - but to harvest the names and addresses of the Exit members attending a Sunday lunch at Suzy Austen's home in October 2016.

See: <http://bit.ly/OpPainter>

The NZ Privacy Commissioner would later find that the check-point not only breached the privacy of the Exit members concerned, but the Police Independent Conduct Authority would find the check-point outright illegal.

See: <http://bit.ly/NZHeraldReport>

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Lesson No 2 - Only use encrypted email such as Protonmail. Open email is akin to a noticeboard. Its contents are there for general consumption. Email is not a confidential means of communication. Only encrypted email is private, but even then a provider may be subpoenaed to hand over your emails to a court. You never know.

Lesson No 3 - Your phone is definitely *not* the best means of communication if you are talking about legally sensitive issues. If you need to speak about something delicate, make a Skype-to-Skype call or use What's App on your phone as both services are encrypted.

Lesson No 4 - Sensitive conversation? Meet in person in a public place. In terms of having your house bugged, it is best to talk about sensitive issues at a local cafe or shopping mall. Somewhere that cannot be bugged (at least not easily).

Other actions undertaken by the Police in the run-up to Suzy being charged included Police visits - known as 'wellness checks' - to Exit members in the local area. It seems one's mere membership of Exit was enough to raise concern that Wellington was about to experience an elderly Jonestown-style mass suicide. A ridiculous idea if ever there were one. However, the consequences for those who were visited by the Police were significant.

For example, some of the Exit members who were visited by the Police for wellness checks were forced to hand over their private stash of Nembutal. Some people put up a fight. Some lost the battle and were compelled to part with their 'safety net for the future' that, in some cases, had been in their possession for more than a decade. The stress and anxiety that the Police wellness checks created are unfathomable.

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Lesson No 5 - If the Police come calling & don't have a warrant (or other legal grounds) to gain entry to your home, don't let them in. Stand your ground! You never know what they will find.

Turning our attention now to Suzy's movements. The NZ Police knew all about Suzy's planned trip to the UK to attend a wedding. And they knew that she was planning on bringing Nembutal back with her as a result of a stop-over in Hong Kong. Inspecting her luggage on her return to New Zealand was an obvious next step. There are some more important points worth noting here.

In order to catch Suzy 'red-handed' in importing Nembutal, the senior investigating officer in the Wellington Police flew to Auckland Airport to greet Suzy's plane (and luggage), unbeknownst to her. Working with three Customs officers, the officer searched Suzy and her husband Mike's luggage before it came out on the baggage carousel. Suzy said that she had wondered at the time why their bags took so long to appear, given they were flying 'priority' (when bags usually come off first). Now she knows. The authorities were busy behind the scenes, doing what is known in the trade as a 'covert' search.

On this occasion, the Police and Customs officers found no drugs in Suzy and Mike's luggage.

Lesson No 6 - If your bags come out last on the baggage claim at the airport, you can assume they have been searched and it might be time to ask questions about what could be going on.

The Arrest of the Decade?

Suzy's trial in Wellington's High Court made front page news throughout its 2-week duration. After all, it's not every day that Police resources are devoted so generously and so widely to a year-long sting operation of this nature. So how did it all happen?

Suzy Austen was arrested while sitting in her car in a suburban Wellington park. She was wearing rubber gloves and was intercepted when she was in the process of 'divvying-up' a pile of white Nembutal powder from China. Suzy's accomplice on the day was 86-year-old fellow Exit Member, Beverley Hurrelle.

Unlike Suzy, Bev would not be charged with drug offences. In court it was heard that the reason for Bev not being charged was her advanced age and 'some kind of dementia'. While Beverley has long suffered from macular degeneration and has significantly impaired sight as result, she remains as sharp as a tack.



Bev Hurrelle - waiting for Suzy Austen's Verdict

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The value judgements of the Police about Bev are nothing short of breathtaking. Perhaps they stemmed from the relative youth of the officers involved. After all, most of the Crown witnesses who appeared in court seemed not much over 30 years. Perhaps the officers of Operation Painter had other motives (ie. they took pity on poor 'blind' Bev). Regardless of their reasons, Police discretion is a powerful factor in how the criminal justice system operates. Nowhere is this more obvious than in Suzy Austen's experience.

Lesson No 7 - Play the age and dementia cards? You never know, you might get lucky like Bev Hurrelle.

Legal Lessons from Suzy's Trial

So what was it about Suzy's involvement with Annemarie Treadwell that led the jury to find her 'not guilty'?

In lay language, Suzy would need to have done something that she knew was going to enable Annemarie to suicide. And Suzy would have had to intended her action to be received in that way.

This would require an intimate knowledge of Annemarie's plans, including knowledge of the day, manner and circumstances of her suicide. And the jury would have needed to believe this chain of events 'beyond reasonable doubt'. As it was, the jury found that Suzy had indeed provided Annemarie with the Nembutal that she would eventually consume to die. What they seem to have doubt over was Suzy's degree of knowledge of Annemarie's actual plans.

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The one defence witness that was called was an expert academic in the area of palliative care, Professor Glynn Owens. In his written statement that was read to the court, the Professor told the court that access to end of life drugs can provide people with ‘peace of mind and lessen pain and suffering’. While he was speaking in the context of palliative care patients, the point is a good one.

For an elderly person, simply having Nembutal at home in the cupboard ‘just in case’ or as an ‘insurance policy for the future’ is a great comfort. And this is what Suzy Austen has always said of Annemarie. Any assistance she may have rendered was so that Annemarie felt back in control and was reassured.

Suzy never intended Annemarie to suicide. That decision was for Annemarie and no one else. Suzy’s ‘not guilty’ verdict in this trial is important but it does not mean that everyone who gives another person Nembutal, will also be found not guilty of assisting their suicide. There are many other factors that can come in to play. The jury verdict in Suzy’s case provides authority on how assisted suicide is legally defined. However, this should be no substitute for caution and common sense.

The Need for Law Reform

Over the years, legislation has attempted to bring clarity and order to the Assisted Suicide debate. By defining the class of person who can be helped to die and by stipulating the manner in which this help can be provided, laws aim to provide guidance via their uniformity and equity.

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To make use of a right to die law, for example, a person must generally be 'terminally ill', or at least have 'unrelievable suffering'. That is, the person must satisfy strict criteria. Once these conditions, are satisfied, generally speaking the person can request lawful assistance from a doctor to die.

Laws in countries such as the Netherlands for example, define exactly which group of people can have help to die. Eligibility is incredibly tightly controlled.

However, even where end of life laws work well, there is one significant drawback. The very strict set of conditions means that the process of establishing eligibility is demanding and can be humiliating to those involved.

In Australia in 1996, a terminally ill person had to obtain two medical opinions, a palliative care review and a psychiatric consultation before they could qualify to use *The Rights of the Terminally Ill Act*. In practice, this meant that some very sick people had to beg the medical profession if they wanted to qualify to use the law to die.

In the course of Philip Nitschke's involvement with this law, it quickly became apparent that none of his four patients would have used the law had they had a 'Peaceful Pill' at home in the cupboard.

Why would you subject themselves to a compulsory psychiatric examination, if you already had the means to a peaceful, dignified death? You would simply wait till the time was right and then take the Pill from your locked cupboard at home. The

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very laws that are supposed to empower sick people can do the exact opposite, denying an individual control when it counts most.

Besides, there are some people who will simply never qualify medically for an assisted suicide. Frailty from old age and a feeling that one's life is now 'completed' is quite different to having terminal cancer. Unless the law stipulates the criteria of 'completed life' or 'tired of life' as it is also called, there can be no assistance (Switzerland excluded).

Finally, while some people may wish to involve the medical profession in their deaths, many others do not. Our point at Exit is that death need not be a medical event. Based on past experience, it is doubtful whether the medical profession is best placed to be given the role of arbiter at all: why should doctors (and not the people themselves) decide who gets the right to die with dignity, and who does not?

(An extensive discussion of Exit's philosophy of death and dying can be found in *Killing Me Softly: Voluntary Euthanasia and the Road to the Peaceful Pill* (Penguin, 2005).

See: <http://bit.ly/1eVogzs>

Conclusion

There is a #TimesUp moment happening as far as the medical model of death and dying is concerned which needs to be reflected in the way end of life laws are conceived and implemented. It is not good enough that only the terminally ill can 'die with dignity'. A good death is a human right. The challenge for the law is to reflect this.

This is especially the case if well-intentioned and kind people are to avoid finding themselves the lead actors in legal nightmares.

Criminal trials are always stressful and expensive occasions for all involved. The state can spend ridiculous amounts of money making a point. The person who is charged can be bankrupted defending themselves. The implementation of law (by merciless prosecutors) make the courtroom an unforgiving beast.

With legal reform moving at snail's pace, the here and now demands extreme caution when it comes to planning for one's end of life. The risk of negative legal consequences for those left behind cannot be overstated.